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IN THE

Supreme Court of the United States

OCTOBER TERM, 1930.

No. 82.

STATE OF ALABAMA,
Petitioner,
v.
THE UNITED STATES.

BRIEF OF PETITIONER.

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Opinion of the Court of Claims.

This case was decided by the Court of Claims, March 12, 1930, (R. 30). The decision of that Court is reported at 38 Fed. (2d) 897.

Jurisdiction of This Court.

Judgment of the Court of Claims was rendered March 12, 1930 (R. 30). Petition for certiorari was filed April 15, 1930 (R. 30). The petition was granted

by this Court on June 2, 1930. Jurisdiction to issue the writ is conferred upon this Court by section 3 (b) of the Act of February 13, 1925 (43 Stat. 936, 939, Ch. 229).

Statement of the Case.

This suit was brought by the State of Alabama to enforce collection from the United States of a license or privilege tax imposed by the State of Alabama upon the business of manufacturing and selling hydro-electric power within that State.

The Congress of the United States in 1916, enacted the National Defense Act, which was approved by the President on June 3, 1916 (Ch. 134, 39 Stat. 166). The provisions of Section 124 of that Act, entitled "Nitrate Supply" are set forth in full in the appendix of this brief.

The intent of Congress in enacting Section 124 of the National Defense Act is set forth in Report No. 297 of the Committee on Military Affairs, 64th Congress, 1st Session, submitted March 6, 1916, with H. R. 12756, which was enacted as the National Defense Act. The explanation of the Committee appeared at pages 9 to 14 of this report. The Senate committee which reported the same bill made no formal report, and the conference report set forth nothing with respect to the purpose of the Act in regard to this power project. Therefore, the intent of Congress is wholly to be derived from Report No. 297.

Report No. 297 shows that the main purpose of Congress in enacting Section 124 was to provide for the authorization of a plant or plants for the manufacture of nitrogen through the air-fixation process, in order to supply the country with powder, and to make it independent in time of war of every foreign source of

nitrogen. Nitrate was obtainable only from two sources —from nitrate from the deserts of Chile, and from the atmosphere which surrounds the earth. An inferior enemy navy could make it impracticable to transport nitrate from Chile, so the establishment of a plant for the production of nitrate from the air was of first importance. The air-fixation process required a great quantity of water power for use in generating the electric energy needed in that process. The establishment of the nitrogen industry was deemed to be of the greatest benefit to the country as a certain source of powder in time of war, and as a great advantage to the agricultural industry in time of peace, through the use of nitrate in the making of fertilizer.

In accordance with the provisions of Section 124, the United States, prior to the period covered by the proposed tax, constructed a dam across the Tennessee River at Muscle Shoals, in the State of Alabama, known as Wilson Dam, and built a power plant in connection with Muscle Shoals which is used by the United States in manufacturing and developing hydro-electric energy. During the calendar year 1926 there were generated in this power plant 432,629,000 kilowatt hours of hydro-electric power, of which the United States used in the operation of locks in aid of navigation, and for lighting and power at its plant, 3,318,000 kilowatt hours. During that year it sold to the Alabama Power Company, a corporation, the remaining 429,311,000 kilowatt hours (R. 6, 7).

The legislature of the State of Alabama passed a revenue law, approved July 22, 1927 (General Acts of Alabama, 1927, pages 139 et seq.), the pertinent provisions of which are also set forth in the appendix to this brief (R. 6).

Since October 1, 1927, and continuously up to and including the date on which the petition was filed in this case, the United States has exercised the privilege of manufacturing and selling hydro-electric power in the State of Alabama to the Alabama Power Company (R. 6).

The State of Alabama assessed and made demand upon the United States for the payment of the tax imposed by the Act of July 22, 1927, due October 1, 1927, measured by the manufacture and sale of approximately 429,311,000 kilowatt hours during the calendar year 1926, the tax amounting to approximately $173,051.60, but the United States refused to pay the tax (R. 6, 7). This suit was brought for the collection of that sum, together with interest thereon at eight per cent. per annum, as provided for by Section 3056 of the Code of Alabama of 1923, which section is set forth in the appendix. In the petition the State of Alabama claimed a penalty of fifteen per cent. for failure of the United States to pay the tax when due. The State now recedes from its claim to the penalty.

A demurrer to the petition was interposed by the United States (R. 8), and was sustained by the Court of Claims in its decision rendered March 12, 1930 (R. 30). On June 2, 1930, this Court granted the application of the petitioner for a writ of certiorari to the Court of Claims.

Specification of Errors.

The Court of Claims erred in holding as follows:

(a) That where the Federal Government as an incident to the exercise of an implied power under the Constitution, engages in a business of a private nature, it is cloaked with immunity from taxation by the State

to the same degree that it would have been if engaged in the performance of an immediate and direct sovereign power.

(b) That where the Federal Government engages in a business of a private nature connected only remotely with the performance of a governmental function, the imposition of a privilege tax upon such business by the government of the State within which the business is carried on tends to hamper or cripple the United States in the exercise of a governmental function.

(c) That the manufacture and sale by the Federal Government to a private corporation of hydro-electric power in the State of Alabama was an immediate and direct exercise of a sovereign power.

Summary of Argument.

In the exercise of granted powers by the Federal Government and of reserved powers by a State, the two sovereignties are upon an equality. *Collector v. Day*, 11 Wall. 113, 126, 127; *Metcalf & Eddy v. Mitchell*, 269 U. S. 514, 521; *Texas v. White*, 7 Wall. 700, 725.

Whenever the Federal Government engages in a business which is of a private nature, that business is not withdrawn from the taxing power of the State within which the business is carried on. *South Carolina v. United States*, 199 U. S. 437; *Flint v. Stone Tracy Co.*, 220 U. S. 107, 157; *Bank of North Dakota v. Olson*, 33 Fed. (2d) 848.

Particularly is this true where the levying of the tax will not hamper or cripple the Federal Government in the direct and immediate performance of an essential governmental function. *Osborn v. United States Bank*, 9 Wheat., 740, 860, 866-7, 868; *National Bank v. Commonwealth*, 9 Wall. 353, 362; *Metcalf & Eddy v. Mitchell, supra*, 522, 523-4.

Argument.

The State of Alabama in this case seeks to uphold its tax by presenting for the consideration of this Court certain simple premises, and if they are sound as principles of constitutional law the tax will stand, otherwise the tax will fail. These premises are: That the governments of the United States and the States are upon an equality; each within its own domain is supreme; in respect to the reserved powers of a State the State is as sovereign and independent as the general government; that the United States may not, in the exercise of its powers, prevent a State from discharging the ordinary functions of government, in the same measure that a State may not, in the exercise of its powers, prevent the United States from discharging its proper functions; that the two governments, National and State, being equal, are each to exercise their powers so as not to interfere with the free and full exercise by the other of its powers; that when a State engages in activities which fall within the domain of the national taxing power the State may be taxed by the United States, and, conversely, when the United States engages in activities which fall within the domain of the States' taxing power, the States may tax the United States; that the equality of the governments of the United States and a State may be preserved, and that the one may be prevented from encroaching upon the other, only if the limits of the powers of each are determined by the same rule of construction; that the sound rule of construction, and the only rule which will maintain the balance between the two kinds of government, is that the limits of the powers of either government must be determined reasonably, so that either government must bear in equal measure the inconveniences which may re-

sult from the exercise by the other government of its true constitutional powers.

In *McCulloch v. Maryland*, 4 Wheat. 316, 410, Chief Justice Marshall said:

> "In America, the powers of sovereignty are divided between the government of the Union and those of the States. They are each sovereign, with respect to the objects committed to it, and neither sovereign with respect to the objects committed to the other."

In *Collector v. Day*, ( ) *supra* ( ), 124, Mr. Justice Nelson repeated the principle in this language:

> "The general government, and the States, although both exist within the same territorial limits, are separate and distinct sovereignties, acting separately and independently of each other, within their respective spheres. The former in its appropriate sphere is supreme; but the States within the limits of their powers not granted, or, in the language of the tenth amendment, 'reserved', are as independent of the general government as that government within its sphere is independent of the States."

In *South Carolina v. United States*, *supra*, 448, Mr. Justice Nelson stated:

> "* * * We have in this Republic a dual system of government, National and State, each operating within the same territory and upon the same persons; and yet working without collision, because their functions are different. There are certain matters over which the National Government has absolute control and no action of the State can interfere therewith, and there are others in which the State is supreme, and in respect to them the

> National Government is powerless. To preserve the even balance between these two governments and hold each in its separate sphere is the peculiar duty of all courts, preeminently of this—a duty oftentimes of great delicacy and difficulty."

Under the first clause of Section 8 of Article I of the Constitution of the United States, Congress is given the power to provide for the common defense of the United States. It is admitted that the National Defense Act was enacted as a measure providing for the common defense of the United States. It is admitted that the State of Alabama has no power to tax or otherwise interfere with the production of nitrates for use in making explosives at Muscle Shoals, or to tax or otherwise interfere with the production of hydro-electric power used in the production of nitrates for use in making explosives. The State of Alabama has not sought to tax any hydro-electric power used in the production of nitrates for the making of explosives. During the period covered by this suit no nitrates were manufactured. However, the State is not claiming its tax upon the portion of the hydro-electric power used by the United States in aid of navigation in the operation of the locks at Wilson Dam, or the power used in connection with its plant and equipment at Wilson Dam. The State is seeking to impose its privilege tax only upon the sale of power in ordinary commerce. While the proportion of the total power sold to the Alabama Power Company was more than ninety-nine per cent of the whole, the tax is not being asserted against that part of the power which was used by the United States for its own purposes, whatever they might be.

The State of Alabama admits that the President of the United States had the right to sell the surplus power

which represented the excess above the Government's requirements. Whether or not the President was given authority under Section 124 of the National Defense Act to sell the surplus power, he would have that authority without specific Congressional enactment. *Chandler-Dunbar v. United States*, 229 U. S. 53. Therefore, while not contesting the right of the United States to sell the surplus power, the State denies the right of the United States to manufacture and sell the power free from the tax of the State.

The statute of Alabama imposing this tax is not a discriminatory enactment; it is not directed against the United States; it applies equally to every manufacturer and seller of hydro-electric power. The volume of hydro-electric power sold by the United States to the Alabama Power Company during the period embraced by this suit was very large. It is a matter of importance to the State to collect this tax.

Is it a matter of importance to the United States to escape the tax? We believe it is not. In the first place, it is quite possible that the tax may have been passed on to the Alabama Power Company in the rate agreed upon as the contract price; but if the rate thus agreed upon did not contemplate the passing of the tax to the Alabama Power Company, the tax merely adds an additional expense item to the operation.

In the case of *South Carolina v. United States, supra*, the United States imposed its internal revenue tax upon the selling of liquor by the State of South Carolina under its dispensary system. South Carolina claimed immunity from the tax upon the ground that in selling liquor through its dispensary system it was acting wholly within its constitutional powers, in fact acting specifically under its police power. This Court held,

nevertheless, that when the State, even though acting under an unquestioned power inhering in it, engaged in a private busiess, the exercise of which was within the proper domain of taxation by the United States, the State must pay the tax for engaging in that business. The opinion pointed out that if the State could engage in the selling of liquor free from the national tax, it could engage in the selling of tobacco with a like immunity, and, in fact, in every business which fell within the internal taxing power of the United States, and likewise it could engage in importations free from tax. In the same way every State might engage in similar enterprises and activities, as the result of which the United States would be deprived of its sources of revenue.

This Court held as it did in the *South Carolina* case, not because of the loss of revenue to the United States which would result if the State of South Carolina were held to have the right to sell liquor free from tax, but because of the principle involved, and the embarrassment which would be suffered by the United States if a course of conduct should be established for the States which they might pursue to the limit. The Court recognized that a borderline must be established over which no State might step, and it drew the borderline for the benefit of the United States in the *South Carolina* case. The oft reiterated principle of the equality of the State and National Governments, in our view, gives the State of Alabama the right to ask that a similar borderline be drawn in this case for its benefit.

The tax paid by South Carolina constituted undoubtedly an inconvenience, but that State was made to bear the inconvenience so that the proper domain of the national taxing power might not be violated. In the instant case the imposition of the hydro-electric tax by

the State of Alabama upon the United States for power sold to the Alabama Power Company constitutes at the most an inconvenience, but the same rule of construction that imposed the tax upon South Carolina should in this case impose the tax upon the United States.

The majority opinion in the Court of Claims in the instant case is based upon a premise which, if carried to its logical conclusion, would wholly destroy the balance between the system of National Government and the system of State Government. The pith of the opinion is as follows (R. 18):

> "Whenever it" (the United States) "lawfully enters a new field and creates a new agency in the performance of its constitutional functions the business covered by the agency and its operations at once become a public business, created and carried on in the exercise of a public function. The mere fact that it may be an invasion of the domain of private business does not change its public character when assumed by the United States."

This pronouncement is warranted by the opinion in *McCulloch v. Maryland, supra*, but is not warranted by the subsequent decisions of this Court narrowing and limiting the statements of Chief Justice Marshall in that case.

The language of *McCulloch v. Maryland, supra*, 420, 421, 430 to 433, is indeed sweeping. It states that the question is one of supremacy; that if the States may tax one of the means employed by the National Government they may tax all of the means employed by that Government (432, 433). But the Court had a broader purpose in the *McCulloch* decision than to decide merely that the Bank of the United States could not be taxed. It wished to settle once and for all the principle that under the

Constitution the National Government was entitled to exercise implied powers to make effective its enumerated powers. It is probable that this broader purpose overshadowed the cause then particularly under consideration. This may be assumed from the fact that, shortly after the *McCulloch* opinion was promulgated, Chief Justice Marshall, speaking for this Court in *Osborn v. The Bank of the United States, supra*, 859, 860, indicated that his language in the *McCulloch* case had been too sweeping. He admitted that if the Bank were a private corporation, the principal object of which was individual trade and individual profit, the mere casual circumstance that it was employed by the Government in the transaction of its fiscal affairs would not exempt it from taxation by a State. The all embracing language of *McCulloch v. Maryland* has been further very greatly restricted by the later decisions of this Court, particularly by *South Carolina v. United States, supra, National Bank v. Commonwealth, supra*, and *Metcalf & Eddy v. Mitchell, supra*.

We do not mean that this Court has in any way departed from the primary principles announced in the *McCulloch* case in connection with the question at issue therein; that is, the question whether or not the Bank of the United States, a central bank of issue, but incidentally engaged in making loans and accepting deposits, should be held exempt from State taxation. Chief Justice Marshall in *Osborn v. The Bank, supra*, 860, 862, stated that these incidents, while constituting business of a private nature, were indissolubly fused with the Bank's public function of acting as the Government's fiscal agent, and were essential to the performance of that public function. He said that if the fiscal agent could have been created without the powers of making

loans and accepting deposits it would be difficult to sustain that part of the Bank's charter granting those powers, but, in fact, those powers constituted the vital part of the corporation and gave it its soul (862). The private operations of the Bank gave value to the currency which it placed in circulation, and the deposits received constituted a reservoir of credit for governmental needs (863, 864, 867).

The Bank of the United States at the period when the *McCulloch* and *Osborn* cases were decided (1819 and 1824) was no innovation in governmental structure. As a notable instance, it had its counterpart in the Bank of England, which, with similar attributes, had been in operation for more than a hundred years. No doubt Chief Justice Marshall regarded the private operations of a central bank as a rare instance of a government finding it necessary to engage in private enterprise. In fact, he stated that, the principle that a State might not interfere with any of the means of the National Government having been established, the State would be left in command of all its resources, harmony would result, and: "We have a principle which is safe for the States, and safe for the Union." *McCulloch v. Maryland, supra*, 430.

There was no general tendency at the time the Constitution was adopted for governments to engage in private enterprise, and the same was true at the period when the *McCulloch* and *Osborn* cases were decided. In *South Carolina v. United States, supra*, 456-458, this Court remarked that at the time the Constitution was adopted no one contemplated the entrance of a government, either State or National, into private business: the thoughts of men were then wholly engaged in devising means to forestall and circumvent the tyranny of gov-

ernments, all of which were held in distrust. The situation has now wholly changed. Very little thought is given to the possibility of governments becoming despotic, but it is common knowledge that a supposed tendency on the part of governments to enter into private business is being watched from many quarters with jealous and distrustful interest.

The activities of the State and National Governments in more recent years have come more and more into contact, and the courts endeavor to give every case a practical construction with the end in view of permitting each government to function with the minimum of interference with the other. Now, the question is one of degree only, and the more recent decisions recognize that, if an activity by one government is not essential to the performance of its inherent governmental functions, and if the levying of a tax because of that activity will not tend to hamper or cripple it in the carrying out of its proper duties, such tax may be levied by the other:

> *National Bank v. Commonwealth*, 9 Wall. 353, 362
> *Metcalf & Eddy v. Mitchell*, 269 U. S. 514, 522, 523-4, and cases cited therein.

In the *South Carolina* case, it was held that, while the internal revenue tax of the United States imposed an expense upon the State of South Carolina, it did not tend to hamper or cripple the State in the exercise of its police power. In the instant case, we assert that, while the payment of a privilege tax by the United States to the State of Alabama would constitute a matter of expense to the United States, the payment of that tax would not tend to hamper or cripple the United

States in the performance of its main purpose at Wilson Dam: to provide for the common defense.

The instant case is new to this court in one respect: it is the first case in which a State has sought to tax the National Government directly for exercising a privilege within its borders. The principle, however, is not new. In the *South Carolina* case this Court held that, when the State of South Carolina engaged in a private business which fell within the domain of the Federal taxing power, the State was subject to the Federal tax. The instant case involves the converse of that ruling. And, always assuming that the National and State Governments are equal within their respective spheres, we regard that case as controlling.

We suggest that whenever the United States engages in a new activity under color of the exercise of one of its granted constitutional powers the question should always be: is this activity a necessary one in the carrying out of the main purpose? There is nothing in Section 124 of the National Defense Act to indicate that Congress thought that the sale of surplus hydro-electric power was essential to the main purpose, but, on the other hand, for aught we know, Congress might just as readily have assumed that the sale of the surplus power would be subject to a State tax. The denial of the State's right to tax in this case comes not from Congress, but from the Executive, and comes from the refusal of the Secretary of War to pay the tax.

We have seen in the *South Carolina* case how this Court, in tracing a borderline over which the State of South Carolina might not step without being liable to tax, had in mind what might happen if the State of South Carolina and other States should decide to enter into every other field of activity of like character.

Always assuming that the government of a State and the government of the United States are equal and are supreme within their respective domains, we assert that the same borderline should be drawn in this case, because it is just as easy to foretell what would happen if the United States should determine to engage in every other activity open to it, in the same manner that it has engaged in the selling of power to the Alabama Power Company.

To give immunity from taxation to every not merely incidental, but non-essential, activity on the part of the United States, must necessarily wear down and render impotent the power of State government. Under the Constitution the power to levy and collect taxes was reserved to the States, because that power is a fundamental and necessary attribute of sovereignty. *Lane County v. Oregon*, 7 Wall. 71, 76-7. To permit the United States to claim immunity from taxation for its non-essential activities would, in the language of the opinion in *National Bank v. Commonwealth*, *supra*, at page 362, "convert a principle founded alone in the necessity of securing to the government of the United States the means of exercising its legitimate powers, into an unauthorized and unjustifiable invasion of the rights of the States." The constitutional limitation upon the taxing power of the State cannot be so varied or extended as seriously to impair the power itself. *Metcalf & Eddy v. Mitchell*, *supra*, 523-4.

There is no field of industry in which the United States might not engage under its power to provide for the national defense, without considering the numerous other powers which under the Constitution it has the right to exercise. It could, for example, determine that facilities for providing for shoes and clothing for a

wartime army should be maintained in time of peace, so that the same would be available in time of war. Plants and machinery for keeping an army of four million men clothed and shod could be maintained in time of peace without the States having any right to question such a step, but it would not follow that, with a peacetime military establishment of less than two hundred thousand men, the National Government could make shoes and clothing to the limit of its plants and machinery and sell them in the general trade free from tax; yet this is precisely the principle which the United States will ask the Court to uphold in this case. The argument, of course, is that the United States, having its plants and machinery, is entitled to use them, and being entitled to use them is entitled to sell the products of the same, and thus reduce the expense of maintaining the plants and machinery. Such a course does indeed reduce the expense of maintenance, but it is unreasonable to say that the United States should be exempted from tax by the States if it sells its products in time of peace merely because it thus reduces the overhead cost.

The example given shows how easily the United States might enter any private business claiming immunity from tax, although a tax upon its activity in any particular field might not tend to hamper or cripple it in the performance of a governmental function. This is what the Court in *South Carolina v. United States* said the State of South Carolina might not do, and, if the government of a State is a sovereignty equal to the government of the United States, we submit that this Court should draw the borderline in this case, and say that the United States may not sell its hydro-electric power in Alabama free from the tax of the State.

One might say that there is no present reason to as-

cribe to the United States a design to infringe upon the revenue sources of the States. But the activities of the United States in the performance of its undoubted constitutional duties have been vastly broadened in the present generation, and the invasion might as readily result from circumstance as from design. The result to the States would be the same whether the invasion should be impelled by calculation or fortuity.

This case involves the balance between the powers of the State and National Governments, the maintenance of which the founders of our system regarded as of transcendent importance. To maintain the balance between the powers of the State Governments and the powers of the National Government there should be a balance of inconveniences of which the United States should bear its full share. It is to make the United States bear the burden of this inconvenience, that is, to bear the expense of this tax, and to save the State of Alabama from bearing more than its proper share of the public burden, that the State brings this suit.

Respectfully submitted,

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APPENDIX.

Statutes Involved.

National Defense Act, Section 124 (Act of June 3, 1916, c. 134, 39 Stat. 166, 215), provides:

> SEC. 124. *Nitrate supply.*—The President of the United States is hereby authorized and empowered to make, or cause to be made, such investigation as in his judgment is necessary to determine the best, cheapest, and most available means for the production of nitrates and other products for munitions of war and useful in the manufacture of fertilizers and other useful products by water power or any other power as in his judgment is the best and cheapest to use; and is also hereby authorized and empowered to designate for the exclusive use of the United States, if in his judgment such means is best and cheapest, such site or sites upon any navigable or nonnavigable river or rivers or upon the public lands, as in his opinion will be necessary for carrying out the purposes of this act; and is further authorized to construct, maintain, and operate, at or on any site or sites so designated, dams, locks, improvements to navigation, power houses, and other plants and equipment or other means than water power as in his judgment is the best and cheapest, necessary or convenient for the generation of electrical or other power and for the production of nitrates or other products needed for munitions of war and useful in the manufacture of fertilizers and other useful products.
>
> The President is authorized to lease, purchase, or acquire, by condemnation, gift, grant, or devise, such lands and rights of way as may be necessary for the construction and operation of such plants, and to take from any lands of the United States, or to purchase or acquire, by condemnation, materials, minerals, and processes, patented or otherwise, nec-

essary for the construction and operation of such plants and for the manufacture of such products.

The products of such plants shall be used by the President for military and naval purposes to the extent that he may deem necessary, and any surplus which he shall determine is not required shall be sold and disposed of by him under such regulations as he may prescribe.

The President is hereby authorized and empowered to employ such officers, agents, or agencies as may in his discretion be necessary to enable him to carry out the purposes herein specified, and to authorize and require such officers, agents, or agencies to perform any and all of the duties imposed upon him by the provisions hereof.

The sum of $20,000,000 is hereby appropriated, out of any moneys in the Treasury not otherwise appropriated, available until expended, to enable the President of the United States to carry out the purposes herein provided for.

The plant or plants provided for under this act shall be constructed and operated solely by the Government and not in conjunction with any other industry or enterprise carried on by private capital.

In order to raise the money appropriated by this act and necessary to carry its provisions into effect, the Secretary of the Treasury, upon the request of the President of the United States, may issue and sell, or use for such purpose or construction hereinabove authorized, any of the bonds of the United States now available in the Treasury of the United States under the act of August fifth, nineteen hundred and nine, the act of February fourth, nineteen hundred and ten, and the act of March second, nineteen hundred and eleven, relating to the issue of bonds for the construction of the Panama Canal, to a total amount not to exceed $20,000,000: *Provided*, That any Panama Canal bonds issued and sold or used under the provisions of this section may be made payable at such time after issue as the Secretary of the Treasury, in his discretion,

may deem advisable, and fix, instead of fifty years after date of issue, as in said act of August fifth, nineteen hundred and nine, not exceeding fifty years.

General Acts of Alabama, 1927, page 139, provide in part:

AN ACT IN REFERENCE TO AND TO FURTHER PROVIDE FOR THE GENERAL REVENUE OF THE STATE OF ALABAMA.

Be it Enacted by the Legislature of Alabama:

SECTION 1. Every person, firm, company, corporation, or association engaged in any business, vocation, occupation, calling, or profession herein enumerated, or who shall exercise any privilege hereinafter described for which a license or privilege tax is required, shall first procure a license, and shall pay for the same, or shall pay for the exercise of such privilege the amounts hereinafter provided and comply with all other provisions of this Act or any other act.

SECTION 2. * * * 2-D. In addition to all other taxes of every kind now imposed by law or otherwise imposed by this Act, there is hereby levied a license or privilege tax upon each person, firm, corporation, agent, or officer engaged in the business of manufacturing and selling hydroelectric power in the State of Alabama for the privilege of engaging in such business; said license or privilege tax shall be due and payable in advance on the first day of October of each year, and shall be in a sum equal to Two-Fifths of a Mill (2/5) upon each kilowatt hour of hyroelectric power manufactured and sold during the preceding calendar year.

SECTION 72. * * * in all proceedings under this Act, the license due October 1st shall not be delinquent before the first day of November of each year. * * *

Section 3056 of the Code of Alabama of 1923 provides as follows:

> All taxes becoming delinquent, bear interest at the rate of eight per cent per annum; and such interest must be added to and collected as part of the taxes, and reported in such manner as the state auditor may prescribe.